



# JULY 2017 GLOBAL IMMIGRATION UPDATE

*Posted on July 21, 2017 by Cyrus Mehta*

## Feature Article:

**DATA PROTECTION: AN OVERVIEW** – This article provides an overview of recent developments in several countries with respect to data protection. **Country Updates**

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**UNITED KINGDOM** – Prime Minister Theresa May recently announced to European leaders in Brussels how she plans to deal with European Union (EU) citizens living in the UK post-Brexit.

## Feature Article

### **DATA PROTECTION: AN OVERVIEW**

*This article provides an overview of recent developments in several countries with respect to data protection.*

### **Italy**

Under Italian law, third parties using personal data must comply with Decree

196/2003 (Privacy Code). The law states that any person who engages in the processing of data within their operations shall at a minimum adopt security measures to guarantee complete confidentiality of the personal data processed. The transfer of sensitive data to non-European Union (EU) countries is subject to rules governed by article 43 of the Decree; which provides that the transmission of personal information from Italy to any country outside the EU, even when it is temporary or by use of any method, is only permitted when:

- (i) the interested party has expressed consent (for highly sensitive information, permission must be in writing); or (ii) the transfer is necessary for the execution of contractual duties or for the fulfillment of specifications requested by the interested party before the conclusion of the contract or for the termination or the execution of a contract stipulated on behalf of the concerned party.

The transfer of information is also permitted when it is authorized by the guarantor, based on adequate assurances provided by the interested party. However, the transfer of personal data to any country outside the EU from Italy is strictly forbidden when the destination country does not guarantee an adequate level of preservation for the sensitive data.

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## Country Updates

### GERMANY

*Effective August 1, 2017, the German parliament is implementing European Union (EU) Directive 2014/66/EC (Intra-Company Transfer (ICT)).*

With the ICT Scheme, the EU Directive aims at providing a common framework for all participating member states (the United Kingdom, Ireland, and Denmark opted out) covering the GATS Mode 4 commitments on Intra-Group Transfers.

Overview: To be subject to this ICT scheme, third-country nationals must obtain a so-called ICT permit issued by the participating EU country where they will spend most of their time. The ICT permit is the first EU immigration permit that allows employment not just in the issuing member state but in a second member state for a period of up to 90 days (short-term mobility). To exercise the right to short-term mobility, the holder of an ICT permit issued by another member state must notify the Bundesamt für Migration und Flüchtlinge (BAMF)

of the intended employment by providing information on the salary and work conditions. Unless the German administration actively refuses approval of the intended travel within 20 days, the third-country national is legally allowed to engage in short-term mobility under the conditions notified. Holders of an ICT permit issued by a fellow member state may also relocate for a period of more than 90 days to Germany by applying for a Mobile ICT card at the German immigration authorities before the transfer. If such an application is submitted 20 days before the start of the transfer and the ICT permit of the other EU member state is still valid, staying in Germany and working at the German entity is permitted for 90 days until the immigration authority's decision has been made.

Eligibility: The ICT Card can be issued to third-country nationals dispatched from their employer abroad to work as a CEO/CFO/comparable manager, specialist, or trainee at a group company in Germany. Its validity is limited to a maximum of three years for CEO/CFO/comparable manager or specialist, and one year for trainees. The group relationship requires a group of companies that functions as a single economic entity through a common source of control, either by direct or indirect 51 percent ownership or domination agreements creating a structure of parent and subsidiary/affiliated companies. Managers are defined as persons directing the host entity or one of its departments with the power to "hire and fire" and who have sole responsibility for a substantial budget and report directly to directors or shareholders. A specialist needs to prove essential and specific knowledge in the area of business and/or the group company or host entity procedures, and a high level of qualification and relevant experience. Before a transfer to Germany, the applicant in the CEO/CFO/manager/specialist category must be employed with an entity of the same company or group for at least six months. A trainee is qualified by a university degree to undergo a paid traineeship during which, as part of the professional development, training in business techniques and methods is received.

Application process: The third-country national aiming for a German ICT Card must file a visa application with the German mission abroad at the place of residence. Visa waiver schemes that exist for other immigration categories and apply to certain nationalities may not be used when applying for the ICT Card. The ICT Card is subject to an internal approval procedure, which includes the German labor authority's verifying that salary and employment conditions will

be comparable to those of German employees.

Note that when dealing with the ICT scheme, the implementations of the framework differ within the different EU member states.

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## ITALY

*The Italian government has reintroduced filing fees for the residence permit "permesso di soggiorno" application.*

The new amounts are:

- Residence permit card valid from 3 months to 1 year: €40
- Residence permit card valid from 1 to 2 years: €50
- EC residence permit card for long-term residents and intra-company residence permit: € 100

Fixed expenses remain in place at about €76 (€30.46 for the electronic card; €16 for the application stamp, and €30 for the mailing fee).

As background, in October 2011, a joint ministerial decree introduced high residence permit application/renewal fees (from €80 to €200, depending on the type and duration of the permit, in addition to the fixed expenses already in place). In 2015, the European Court of Justice judged the tax to be a violation of European Union (EU) regulations. Subsequently, the Regional Administrative Court of Lazio declared the residence permit tax illegal and abolished the fee on applications in May 2016. On September 14, 2016, with Presidential Decree No. 03903/2016, the Council of State decided to suspend the court order of the TAR, Lazio's Regional Administrative Court, and the fees were temporarily reintroduced, until a final decision was reached. Again, in November 2016, the Council of State confirmed the abolishment of the residence permit application/renewal fees introduced in 2011 (€80 to €200). New fees are in place now, as noted above, but they are lower than the amounts introduced in 2011 that were challenged by the European Court of Justice.

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## PERU

*There have been new legislative developments in Peruvian immigration law.*

On January 7, 2017, legislative decree N° 1350, the "New Law of MIGRACIONES,"

was published in the Official Gazette *El Peruano* under the powers delegated by the Peruvian Congress by virtue of Law No. 30506. The new law establishes a series of changes to the law on migration with respect to citizen security, standards for the internal and external immigration policy of Peru, including some aspects of the National Superintendence of Immigration (MIGRACIONES), and the regulation of border security, among other important aspects. The ultimate aim of the new law is to simplify and order the immigration law protecting the fundamental rights of national and foreign citizens, and strengthen national security.

Legislative Decree N° 1350, in force since March 1, 2017, means considerable progress because it changes the scheme considerably with respect to immigration categories and statuses, and creates several new immigration statuses, among other things. New regulations were published in *El Peruano* were published on March 27, 2017, with Supreme Decree No. 007-2017-IN.

With the entry into force of the new law, the former Aliens Law N° 703 and its amendment, Legislative Decree N° 1043, were repealed along with Legislative Decree No. 1236 and any rule that is opposed to Legislative Decree No. 1350.

The law includes two important changes:

1. With respect to temporary migration for business, the new law allows foreigners without the intention of residing in Peru to perform business, legal, contractual, and specialized technical assistance or similar activities in Peruvian territory. The status is granted for 183 days, consecutive or cumulative, over a period of 1 year counted from the first entry into Peru. This status is not renewable.
2. "Appointed worker" status is now granted not only on a temporary basis, but also as a resident status.

Thus, foreign individuals coming to work in Peru to carry out labor activities in the national territory, which consist of the accomplishment of a specific task or function or a job that requires specialized professional, commercial, or technical knowledge and who are sent by a foreign employer, as well as those who are commissioned by a highly specialized international corporation for the repair or maintenance of machinery or technically complex or advanced systems or mechanisms, or for corporate audits and international certifications, may receive a temporary visa with an authorized stay of 183 days, consecutive

or cumulative, over a period of 1 year counted from the first entry into Peruvian territory, extendable for the same term but less than 1 year. In case of residents 365 days, renewable.

Both allow multiple entries. Foreigners with the migratory status of resident—appointed worker will hold a foreign card (*carné de extranjería*).

A foreigner with this migratory status cannot carry out paid or lucrative activities for his or her own account in Peru.

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## **RUSSIA**

*Several Presidential Orders have been issued with respect to tournament security and the lifting of limitations on Turkish travel.*

Security measures during tournaments. In accordance with Presidential Order No. 202 dated September 5, 2017, “On security measures during the World Cup FIFA 2018 and Confederation Cup FIFA 2017,” rules of address registration are subject to change. The Confederation Cup will be held from June 1 until July 12 in Moscow, St. Petersburg, Kazan, and Sochi. The World Cup will be held from May 25 until July 25, 2018, in Moscow, St. Petersburg, Volgograd, Ekaterinburg, Kazan, Kaliningrad, Nizhni Novgorod, Samara, Rostov on Don, Saransk, and Sochi.

The changes will affect both Russian and foreign citizens.

Russian citizens who arrive in these cities during the tournaments should apply to register their arrival in the place of temporary residence within three calendar days of arrival.

Foreign nationals who have entered Russia during these tournaments should register their addresses within one calendar (not working) day from the arrival date. Foreign nationals arriving in Russia during a weekend or public holiday should register with the immigration authorities within 24 hours of arrival. Immigration authorities work during weekends and public holidays.

The new address registration rules apply to all foreign nationals regardless of the purpose of the visit, whether tourism, business, or on a work permit, including HQS. The new rules are applicable only during the tournaments and only in the mentioned cities.

The only exclusion to the new rules applies to Russian citizens and foreign nationals who are participants in the Confederation Cup and World Cup, FIFA official representatives and related organizations, and national football associations that are included in the FIFA accredited list.

[Limitations lifted on Turkish travel](#). Also, in accordance with Presidential Order No. 224 dated May 31, 2017, "On termination of particular economic measures related to Turkish Republic," Turkish nationals may travel to Russia for tourism, business, or work purposes. The limitations that have been in place from November 2015 have been terminated. The order came into force as of May 31, 2017.

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## **UNITED KINGDOM**

*Prime Minister Theresa May recently announced to European leaders in Brussels how she plans to deal with European Union (EU) citizens living in the UK post-Brexit.*

The UK government has released "[The United Kingdom's Exit from the European Union](#)," which provides more detail on the Prime Minister's approach and offering to EU citizens.

The Prime Minister has pledged that EU citizens who arrived in the UK before the triggering of Article 50 will be entitled to stay and those who arrive after the "cut-off" date will be given a two-year "grace period" after Brexit to obtain permission to remain in the UK or return to their home countries. She has not stated when the "cut-off" date will be, but the actual Brexit day, March 29, 2019, is a possibility.

Below is a summary of the proposal:

- All EU citizens living in the UK will be transitioned into UK domestic law post-Brexit—this is not an automatic transfer, so EU citizens will need to proactively apply to the Home Office to remain in one of the categories under UK Immigration Rules. This will be the UK's replacement scheme for EU free movement law.
- In the interim, the UK will be looking to introduce a voluntary scheme for EU citizens to apply under UK Immigration Rules for indefinite leave to remain before Brexit.

- Beginning on March 29, 2019, a two-year transitional period will apply (until March 29, 2021) where EU citizens resident in the UK will have deemed leave under the UK Immigration Rules. This is the "grace period" to allow EU citizens to regularize their UK status post-Brexit. If the EU citizen does not apply for permission to stay before this two-year grace period ends, the EU citizen will lose his or her right to stay in the UK afterwards.
- EU citizens who acquired permanent residence in the UK before the "cut-off" date will be given a new settled status. However, the "cut-off" date has yet to be clarified—it could be March 29, 2017, or March 29, 2019. The EU citizen will still need to meet a number of requirements. It has been proposed that upon application, the EU citizen will be assessed on his or her length of residency (usually five years) and on conduct and criminality, mainly to ensure that the applicant is not a threat to the UK. There was no mentioning of the effect of absences, but it is likely that this will be assessed as part of the application. Also, there would only be an entitlement to apply, not an entitlement to indefinite leave (permission) to remain in the UK.
- EU citizens who are in the process of acquiring the right of permanent residence before the "cut-off date" will be able to continue their track to indefinite leave to remain after five years of residence in the UK if they can show they have been working or studying. It is unclear how much self-employed EU citizens working in the UK will be protected.
- EU citizens who arrive after the "cut-off" date will need to come under UK Immigration Rules, but the applicable rules have not yet been determined.
- Irish citizens will not be affected and can remain in the UK. However, family members of Irish citizens (who are not Irish or UK citizens) will not be able to rely on the EU free movement law after Brexit and must apply under UK Immigration Rules, as with any other EU and non-EU citizen.
- Family members of EU citizens will be treated in line with the principal EU citizen but they too must meet the residence requirement of five years and also demonstrate that they are in a genuine relationship with the EU national—this could include providing evidence of cohabitation. However, family members of EU nationals who arrive in the UK after the "cut-off"



date will not be covered by the transitional arrangements and must apply under UK Immigration Rules.

- Children born in the UK to EU citizens who hold permanent residence before the child's birth will automatically be British. Therefore, EU citizens must show that they acquired permanent residence under the EU free movement law before their child was born in the UK for their child to be born British.
- However, children born overseas or children born in the UK to EU citizen parents (who do not have permanent residence) will be eligible to apply for indefinite leave to remain. This would apply regardless of when the child was born or when he or she arrived in the UK. An EU citizen parent who arrived in the UK before the "cut-off" date and must apply for permission to stay in the UK post-Brexit also must apply for the same permission for his or her child.
- Existing rules on the rights of EU citizens and UK nationals to export UK social welfare benefits to the EU will be protected for those who are exporting such UK social benefits on the "cut-off" date.
- UK state pensions are currently payable to anyone eligible, wherever they reside in the world, but annual increases (known as uprating) are only payable to those living in the EU due to current EU law. The UK intends to continue to export and uprate the UK state pension within the EU, provided that the EU will also do the same and this will be agreed through negotiations.
- The UK will seek to protect healthcare arrangements with the view of ensuring that EU citizens living in the UK will still be eligible for National Health Service-funded healthcare in the UK. This is only on the basis that the EU will also provide the same for UK nationals living in the EU but there is no indication as to what these reciprocal healthcare provisions may be.
- Confirmation that current EU citizen students enrolled in a UK course at a UK university or further education institution in the academic years of 2017/18 and 2018/19 will continue to be eligible for student support and home fee status for the duration of their course.

- The UK will seek to ensure that professional qualifications obtained before Brexit will continue to be mutually recognized so that these professionals can continue to practice in the UK without unfair detriment or discrimination.
- The European courts will not have jurisdiction in the UK—the arrangements will only be enforceable through the UK judicial system.

There are still many questions, and many European nationals living in the UK await the formalization of these propositions.

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